IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 14140 of 2004

Between:

1 Bommuri Chandra Rao, S/o.B.Appa Rao,
Working since the year 1981 O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
2 H.D.Singh, S/o.Harkhnath Singh,
Working since the year 1999 O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
3 P.Nookaraju, S/o.Polla Rao,
Working since the year 1998, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
4 J.Sai(Mrs) W/o.Munna,
Working since the year 1997, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
5 V.Vijya (Mrs) W/o.Appa Rao,
Working since the year 1998 O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
6 Dharmendra Kumar, S/o.Bhureswara Ram,
Working since the year 1996, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
7 J.Ramulamma (Mrs), W/o.Sanyasi,
Working since the year 1997, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
8 Y.Ratnam (Mrs), W/o.Rajeswara Rao,
Working since the year 1997, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
9 P.Chanti, S/o.Jangamayya,
Working since the year 1999, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
10 K.M.K.Prasad, S/o.Laxmana Rao,
Working since the year 1996, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.
11 Ch.V.surya Rao, S/o.Rama Rao,
Working since the year 1996, O/o.Eastern Naval Command

Naval officers Institute, Visakhapatnam.

12 Namballa Giriprasad, S/o.Sirnivasa Rao,
Working since the year 1998, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

13 Ch.V.Rama Rao, S/o.B.Appa Rao,
Working since the year 1998, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

14 Giduthuri Butchibabu, S/o.Venkataswamy,
Working since the year 1991, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

15 G.V.Ramana, S/o.Appa Rao,
Working since the year 1994 O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

16 M.Ballu, S/o.Ratnam,
Working since the year 1997, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

17 Cheekati Kamaraju, S/o.Latchanna,
Working since the year 2002, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

18 Komarapu Srinivas Rao, S/o.Satyam Naidu,
Working since the year 1989, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

19 Komara Laxmana Rao, S/o.Venkatswamy,
Working since the year 1982, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

20 Konda Simhachalam, S/o.Ramana,
Working since the year 1998, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

21 Vadapalli Srinivasa Rao, S/o.Appalaswamy,
Working since the year 1997, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

22 Tekkam Appala Raju, s/o.T.A.Raju,
Working since the year 1997, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

23 Gajji Suryanarayana, S/o.Sanyasi Rao,
Working since the year 2002, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

24 M.T.Naidu, S/o.Appalanaidu,
Working since the year 1989, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

25 V.Kameshwara Rao, S/o.Gangadhararao,
Working since the year 2002, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

26 Arnepalli Ashok, S/o.Jagannadham Naidu,
Working since the year 2000, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

27 R.Kiran Kumar, s/o.Sudarshana Rao,
Working since the year 2002, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

28 K.Bhaskar, S/o.Guruvulu,
Working since the year 2002, O/o.Eastern Naval Command
Naval officers Institute, Visakhapatnam.

29 N.Srinivasa Rao, S/o.Simhachalam,

Working since the year 1992, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

30 T.Ramu, S/o.Marayya, Working since the year 1996, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

31 T.Raja Rao, S/o.Marayya, Working since the year 1987, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

32 J.Tulasi Das, S/o.Raja Rao, Working since the year 2002, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

33 A.Kameswara Rao, S/o.Kondala Rao, Working since the year 1993, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

34 G.Mohana Rao, S/o.Venkata Swamy, Working since the year 1995, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

35 A.CH.Appa Rao, S/o.Kamayya, Working since the year 1998, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

36 Burra Mohan Kumar, S/o.Burra Raju, Working since the year 2001, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

37 E.Simhachalam, S/o.Pentayya, Working since the year 2000, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

38 Sarvasiddi Appa Rao, S/o.Pollipalli, Working since the year 2000, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

39 Somadula Krishna, S/o.Bala, Working since the year 2002, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

40 E.Anand, S/o.Thomas, Working since the year 1999, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

41 Ch.Ravikumar, S/o.Joseph, Working since the year 2000, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

42 Bathili Nooka Raju, S/o.Asirayya, Working since the year 2000, O/o.Eastern Naval Command Naval officers Institute, Visakhapatnam.

..... PETITIONERS

AND

1 The Union of India, rep.by its Secretary, Ministry of Defence New Delhi.

2 Commander-in-chief, Naval Head Quarters, Ministry of Defence, New Delhi.

3 Falg officer Commander-in-Chief, Eastern Naval Command, Visakhapatnam.

4 The Chairman, Eastern Naval Command, Naval office Institute, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the 3rd respondent vide the Tender Notice quoting No.901/ADM/NO(V) dt.21-7-2004 issued by the 3rd respondent in contravention of the Rules and Regulations framed by the 2nd respondent in consultation with the 1st respondent as illegal, arbitrary and unconstitutional besides being violative of the Arts. 14, 16, 21 and 300-A of the Constitution of India and consequently set aside the impugned Tender Notice vide quoting No.901/ADM/NOI(V) dt.21-7-2004.

Counsel for the Petitioner: MR.J.RAMACHANDRA RAO

Counsel for the Respondents: MR.A.RAJASEKHAR REDDY

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 14140 of 2004

O R D E R:

The case of the writ petitioners is that they have been working in the 3rd respondent-Command with service ranging from 5 to 27 years without interruption and all the posts have been sanctioned by 2nd respondent and their service conditions are governed by the terms and conditions of the civilian employees. The respondents 2 to 4 in discharging various sovereign functions of the defence of the nation have been engaging civil servants in various disciplines and activities who are vested with the protection under the Rules and Regulations laid down under Article 309 of the Constitution of India. The 3rd respondent issued proceedings dated 21.7.2004 inviting the tenders from private parties for contract for the supply of services of the OI (V) (Officers Institute, Visakhapatnam) at the Naval Officers Institute, Visakhapatnam for the period from 15.8.2004 to

14.8.2005, the effect of which is the displacement of the petitioners' services. The petitioners state that the said proceedings is in contravention of the Rules laid down by 1st and 2nd respondents. As per the clauses in the tender notice a private contractor has to engage his own employees in all the cadres of employment in place of the regular posts. Hence, the writ petition.

Respondent No.4 filed the counter affidavit stating that it is not a body covered in the definition of the term "State" and R-4 has been created for the specific purpose of improving the quality life of the armed forces officers and their families stationed at Visakhapatnam by providing recreational facilities to them and its activities are in no manner akin to the activities of the State. As such, the writ petition is not maintainable.

The establishment of respondent No.4 came to be formed by way of Bye-Laws of the Institute dated 24/26.6.1997. The entire financial cost of operating and maintaining the Officers Institute, Visakhapatnam {OI(V)} is met from the contributions collected from all the armed forces officers stationed at Visakhapatnam and the sale of eatables to these members and their dependents and guests. The 3rd respondent being the senior most officer present in Visakhapatnam acts as the Patron of the OI(V). In order to manage and account for the contributions made by the members and receipt from the sale of eatables in a systematic manner, a non-public fund has been set up in accordance with the existing practices. The operations of the OI(V) is controlled by a committee consisting of elected members. This committee amongst others is *inter alia* authorized to employ civilian staff on ad hoc basis for carrying out various tasks pertaining to the maintenance and operation of OI(V). The terms of engagement of these workers is akin to master and domestic help and the same is seasonal in nature and in fact there is no compulsion on these workers to continuously serve in OI(V). The 3rd respondent in his capacity as the patron of OI(V) issued the impugned tender notice for engaging the existing staff pertaining to

catering, housekeeping, maintenance and arboriculture services. It is admitted that the petitioners have been serving for the periods ranging from 5 to 27 years continuously. Prior to establishment of OI(V), some of the petitioners are in casual employment of the Officers Mess at Visakhapatnam. The petitioners were engaged on ad hoc and daily wages. The petitioners have not been covered by the orders dated 29.5.2002. The said proceedings does not confer any right on the petitioners in the nature of regular Government service. Therefore, the respondents pray to dismiss the writ petition.

None appeared for the petitioners on 29.11.2004, 6.12.2004 and 6.12.2004. On 29.12.2004 also, none appeared for the petitioners in the forenoon and in the afternoon. On 22.12.2004 again the matter was listed but none appeared for the petitioners. Heard the learned counsel for the respondents.

The learned counsel for the respondents contended that the writ petition is not maintainable inasmuch as the 4th respondent is not a State as given under Article 12 of the Constitution; that the petitioners are appointed on ad hoc basis for the purpose of serving the needs of the members of OI(V) and the dependents and guests. The OI(V) is formed by way of bye-laws. The formation of OI(V) is not a statutory one and therefore the writ petition is not maintainable. The tender notification issued by the 3rd respondent in his capacity as the patron of OI(V) cannot be challenged. It is the decision of the committee of the OI(V) herein to call for the tenders and in order to streamline the operation of OI(V) the said proceedings has been issued and therefore the writ petition deserves to be dismissed.

The tender notification issued by 3rd respondent calling for the tenders for supply of services of OI(V) at Visakhapatnam dated 21.7.2004 is under challenge. The aim and object is to provide welfare, sports and recreational facilities, mainly for the officers of the Navy, Army and Air Force in active service and retired officers

residing in and around Visakhapatnam. This Institute is not constituted in pursuance of any statutory obligation of the Defence of India and/or any other Armed Forces Act. A specific plea has been taken that the activities of the OI(V) in no manner whatsoever are controlled or managed or financed by State or Central Governments. This 4th respondent came to be formed by way of Bye-laws with the prime object of improving the quality of life and welfare of the Armed Forces and their families stationed at Visakhapatnam by providing various recreational facilities. Therefore, the 4th respondent-Institute is not constituted under any Statute. The entire financial cost of the operating and maintaining of OI(V) is met from the contributions collected from all Armed Forces Officers stationed at Visakhapatnam. Therefore, as rightly contended by the learned counsel for the respondents, R-4 is not a body covered in the definition of the term 'State' as given under Article 12 of the Constitution of India. It is for the 4th respondent to take decision for improvement of the services for proper maintenance of OI(V). Respondent No.4 took a policy decision to call for tenders with the object of providing improved quality of service. R-3 being the patron-in-chief of R-4, issued the notification so as to streamline the operation of OI(V) by introducing a professional contractor. It is not a case of arbitrary exercise of power by the 3rd respondent as the patron of 4th respondent. No mala fides are attributed to the 3rd respondent in calling for the tenders. According to the learned counsel for the respondents, the tender notification, if read in its entirety, would show for providing employment of additional workers over and above the petitioners who would be engaged by the contractor. It is also made clear in the tender notification that the existing workers as mentioned in the Annexure to the Tender Enquiry would be engaged by the Contractor.

In such view of the matter, the order under challenge does not suffer from any legal infirmities so as to call for interference of this court. Furthermore, the 4th respondent-Institute is not

controlled and managed by the State or Central Governments and all the funds of the OI(V) are only from the contributions made by the members. Therefore, I am of the opinion that the writ petition is not maintainable. The writ petition is accordingly dismissed. No order as to costs.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Ministry of Defence, Union of India, New Delhi.
2 Commander-in-chief, Naval Head Quarters, Ministry of Defence, New Delhi.
3 Falg Officer Commander-in-Chief, Eastern Naval Command, Visakhapatnam.
4 The Chairman, Eastern Naval Command, Naval office Institute, Visakhapatnam.

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